

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

JUL - 6 1998

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 96-12
Table of Allotments,)	RM-8741
FM Broadcast Stations)	
(The Dalles and Corvallis, Oregon))	
)	
and)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 96-7
Table of Allotments,)	RM-8732
FM Broadcast Stations)	
(Banks, Redmond and Corvallis,)	
Oregon))	

TO: Chief, Allocations Branch
 Policy and Rules Division
 Mass Media Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

LifeTalk Broadcasting Association ("LifeTalk"), by counsel and pursuant to Section 1.106(g) of the Commission's rules, hereby opposes the May 19, 1998 Petition for Reconsideration filed in the above-identified consolidated proceeding by Madgekai Broadcasting, Inc. ("MBI"). MBI seeks reconsideration of the Commission's Report and Order, 13 F.C.C.Rcd. 6596 (MMB 1998), wherein it allotted Channel *268C3 to The Dalles, Oregon and upgraded the allotment for KBBT-FM, Banks, Oregon from Channel 298C2 to Channel 298C1. MBI's own mutually exclusive proposal to upgrade its station, KFLY, Corvallis, Oregon, from Channel 268C2 to Channel 268, was rejected by the Commission.

LifeTalk originally filed a Petition for Rulemaking, requesting the allotment and reservation of a channel to serve The Dalles. The establishment of such an allotment is its

primary concern in this proceeding. Accordingly, LifeTalk opposes MBI's Petition for Reconsideration to the extent that MBI seeks to reverse the Commission's decision concerning the allotment of a reserved channel to The Dalles.

MBI's Petition is imbued with a fatal procedural defect in that it presents a substantial amount of evidentiary material which was not previously presented to the Commission, in violation of Section 106(c) of the Commission's rules. There are some exceptions to this policy. However, MBI does not even attempt to claim any of them except to say that consideration of this new material would be in the public interest.

Part of the newly produced material presented by MBI deals with the purported availability of reserved band channels. The need to reserve a nonreserved band channel for noncommercial use arises from the fact that no reserved band channels are available to serve The Dalles, due in large part to the proximity of a Channel 6 television station, KOIN, Portland, Oregon. Under such circumstances, it is the Commission's policy to allot a nonreserved band channel and to reserve it for noncommercial use. LifeTalk sought to apply this policy to The Dalles. In its Petition for Rulemaking, LifeTalk showed that no reserved band channels could support a new station at The Dalles. Thus, this issue was clearly in play from the inception of the proceeding. The Commission discussed and confirmed this point in its Report and Order, stating LifeTalk's showing was consistent with its own findings.

MBI presents detailed engineering data in an attempt to demonstrate that reserved band channels could be used to serve

The Dalles. The facts alleged are not new or unique. MBI offers no explanation for why it could not have presented this demonstration while the record was still open in this proceeding. Accordingly, MBI's technical demonstration about the availability of a reserved band channel must be rejected and dismissed as untimely.

The same must be said about MBI's allegations that Channel 268C3 cannot provide city-grade coverage to The Dalles, and that Channel 256C3, a nonmutually exclusive channel, is available as an alternate for the allotment to The Dalles. Although LifeTalk had originally proposed Channel 256C3 for The Dalles, the Commission determined that that channel might not provide adequate coverage and substituted Channel 268C3. Again, all of these issues and facts were well-publicized in this proceeding by the time of the Commission's public notice on June 5, 1996 that MBI's application was mutually exclusive with the proposals in both Docket 96-7 and Docket 96-12. Yet, MBI's July 5, 1996 Comments were completely silent on these issues. MBI again failed to show why it could not have produced these arguments earlier. Therefore, its demonstrations pertaining to these issues must also be rejected and dismissed as untimely.

Finally, the same fate is reserved for MBI's new complaint that the Commission's allotment of Channel *268C3 to The Dalles violated the cut-off rules with respect to MBI's application to upgrade KFLY. This issue was also certainly ripe for discussion at the time that MBI filed its Comments on July 5, 1996. Having remained silent then and having failed to show or even

to attempt to show why its arguments should be considered now out of season, MBI is simply not able to demonstrate any good cause why the Commission should consider its argument now.

The only issue pertaining to LifeTalk in MBI's Petition for Reconsideration which MBI did previously raise concerns the question of whether LifeTalk's commitment to apply for a station on Channel *268C3 if allotted adequately addressed the Commission's concerns about the special construction needs which might arise at the reference site.

In the Notice of Proposed Rulemaking in Docket 96-12, the Commission asked for an "affirmative statement" in LifeTalk's filing that it would construct a tower of adequate height, which was then deemed to be necessarily higher than that normally constructed for a Class C3 station. Of course, the Commission's concern was that city-grade coverage would be provided to the community of license. In Comments filed April 5, 1996, and Reply Comments filed July 5, 1996, LifeTalk reiterated its intentions to apply for such a station if the channel were allotted. In a Supplement filed on July 15, 1996, MBI clarified that it intended to construct a station that would provide city-grade coverage to The Dalles as required by the Commission's rules.

MBI moved to strike LifeTalk's commitment as less than adequate and untimely. The Commission found that LifeTalk's statement of intentions was adequate and acceptable. However, the Commission also found the whole matter to be moot because it placed the reference site for Channel *268C3 at a different location where it is predicted that an antenna at a more

customary height will be sufficient. MBI continues to argue now that MBI's entire proposal should be dismissed because LifeTalk failed to clearly express its intention to apply for the facility it proposed. MBI's argument is an example of hyperbolic legalistic knit-picking devoid of substantive support. LifeTalk asserts that its statements were adequately clear about its intentions. Beyond that, the reasonable party should reasonably infer that LifeTalk would not continue to expend its time and effort in this proceeding if it did not intend to file a grantable application. The Commission's decision to accept LifeTalk's expressions of its intentions was correct. MBI has not shown any reason to reject them other than its own partisan need to have The Dalles allotment erased.

The Commission expressly stated in paragraph 17 of the Report and Order that a prime factor in its decision was the ability with the combination of allotments chosen to add a new noncommercial service to The Dalles in furtherance of the fourth allotment priority described in FM Channel Policies, 90 F.C.C.2d 88 (1982). In that policy statement, the Commission stated that the need for or lack of public radio service would be a factor within this priority group.

LifeTalk demonstrated in its Petition for Rulemaking that The Dalles lacked noncommercial radio service and that its proposal could address that need. The Commission agreed with this important policy consideration, and indeed, identified this point as having significant weight in its ultimate decision. MBI did not address this issue in its Petition for

Reconsideration. It would have the Commission overturn the Report and Order on the basis of a rash of untimely allegations without regard for the most important policy issue set forth in the order. The Commission cannot and should not humor such a request.

For the foregoing reasons, LifeTalk respectfully urges the Commission to reject MBI's Petition for Reconsideration.

Respectfully submitted,

LIFETALK BROADCASTING ASSOCIATION

By: 
Donald E. Martin

DONALD E. MARTIN, P.C.
P. O. Box 19351
Washington, D.C. 20036
(703) 671-8887

Its Attorney

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CERTIFICATE OF SERVICE

I, Donald E. Martin, hereby certify this 6th day of July, 1998, that I have caused a copy of the foregoing document to be served by United States mail with first class postage prepaid upon the following:

Matthew H. McCormick, Esquire
Reddy Begley & McCormick
Suite 350
2175 K Street, N.W.
Washington, D.C. 20037
Counsel for Madgekal Broadcasting, Inc.

J. Dominic Monahan, Esquire
Luvaas Cobb Richards & Fraser
Suite 300
777 High Street
Eugene, Oregon 97401
Counsel for Combined Communications, Inc.

Roger J. Metzler, Esquire
Keck Mahin & Cate
One Maritime Plaza, 23rd Floor
San Francisco, California 94111
Counsel for Hurricane Communications, Inc.

Jerold L. Jacobs, Esquire
Rosenman & Colin
Suite 200
1300 19th Street, N.W.
Washington, D.C. 20036
Counsel for American Radio Systems License Corp.


Donald E. Martin